

AMENDED IN ASSEMBLY MAY 7, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 586

Introduced by Assembly Member Huber

February 25, 2009

An act to amend Sections 3212, 3212.1, 3212.5, 3212.6, 3212.8, 3212.85, and 3212.9 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 586, as amended, Huber. Workers' compensation: public employees: medical conditions.

Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment.

Existing law provides that, in the case of certain state and local firefighting and law enforcement personnel, the term "injury" includes hernia, cancer, leukemia, heart trouble, pneumonia, illness or resulting death due to exposure to a biochemical substance, blood-borne infectious disease, methicillin-resistant *Staphylococcus aureus* skin infection, tuberculosis, and meningitis that develops or manifests itself during a period while the member is in the service of the governmental entity, and establishes a disputable presumption *presumptions* in this regard.

~~This bill would extend these provisions to members of the police departments at the University of California (UC) and California State University (CSU). This bill would also extend these provisions, in the case of either tuberculosis or meningitis, to members of police~~

departments of a district and, in the case of a hernia, blood-borne infectious disease, or methicillin-resistant *Staphylococcus aureus* skin infection, to members of fire departments at UC and CSU.

This bill would, with respect to law enforcement personnel, specify certain peace officers to whom the disputable presumptions apply.

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3212 of the Labor Code is amended to
2 read:

3 3212. In the case of ~~members of a sheriff's office or the~~
4 ~~California Highway Patrol, district attorney's staff of inspectors~~
5 ~~and investigators, or of police or fire departments of cities,~~
6 ~~counties, cities and counties, districts, the University of California,~~
7 ~~California State University, or other public or municipal~~
8 ~~corporations or political subdivisions, whether those members are~~
9 *peace officers described in Sections 830.1 to 830.38, inclusive, of*
10 *the Penal Code and members of fire departments of cities, counties,*
11 *cities and counties, districts, or other public or municipal*
12 *corporations or political subdivisions, whether those persons are*
13 *volunteer, partly paid, or fully paid, and in the case of active*
14 *firefighting members of the Department of Forestry and Fire*
15 *Protection whose duties require firefighting or of any county*
16 *forestry or firefighting department or unit, whether voluntary, fully*
17 *paid, or partly paid, and in the case of members of the warden*
18 *service of the Wildlife Protection Branch of the Department of*
19 *Fish and Game whose principal duties consist of active law*
20 *enforcement service, excepting those whose principal duties are*
21 *clerical or otherwise do not clearly fall within the scope of active*
22 *law enforcement service such as stenographers, telephone*
23 *operators, and other officeworkers, the term "injury" as used in*
24 *this act includes hernia when any part of the hernia develops or*
25 *manifests itself during a period while the member is in the service*
26 *in the office, staff, division, department, or unit, and in the case*
27 *of members of fire departments, except those whose principal*
28 *duties are clerical, such as stenographers, telephone operators, and*
29 *other officeworkers, and in the case of county forestry or*
30 *firefighting departments, except those whose principal duties are*

1 clerical, such as stenographers, telephone operators, and other
2 officeworkers, and in the case of active firefighting members of
3 the Department of Forestry and Fire Protection whose duties
4 require firefighting, and in the case of members of the warden
5 service of the Wildlife Protection Branch of the Department of
6 Fish and Game whose principal duties consist of active law
7 enforcement service, excepting those whose principal duties are
8 clerical or otherwise do not clearly fall within the scope of active
9 law enforcement service such as stenographers, telephone
10 operators, and other officeworkers, the term “injury” includes
11 pneumonia and heart trouble that develops or manifests itself
12 during a period while the member is in the service of the office,
13 staff, department, or unit. In the case of regular salaried county or
14 city and county peace officers, the term “injury” also includes any
15 hernia that manifests itself or develops during a period while the
16 officer is in the service. The compensation that is awarded for the
17 hernia, heart trouble, or pneumonia shall include full hospital,
18 surgical, medical treatment, disability indemnity, and death
19 benefits, as provided by the workers’ compensation laws of this
20 state.

21 The hernia, heart trouble, or pneumonia so developing or
22 manifesting itself in those cases shall be presumed to arise out of
23 and in the course of the employment. This presumption is
24 disputable and may be controverted by other evidence, but unless
25 so controverted, the appeals board is bound to find in accordance
26 with it. The presumption shall be extended to a member following
27 termination of service for a period of three calendar months for
28 each full year of the requisite service, but not to exceed 60 months
29 in any circumstance, commencing with the last date actually
30 worked in the specified capacity.

31 The hernia, heart trouble, or pneumonia so developing or
32 manifesting itself in those cases shall in no case be attributed to
33 any disease existing prior to that development or manifestation.

34 *SEC. 2. Section 3212.1 of the Labor Code is amended to read:*

35 3212.1. (a) This section applies to all of the following:

36 (1) Active firefighting members, whether volunteers, partly
37 paid, or fully paid, of all of the following fire departments:

38 (A) A fire department of a city, county, city and county, district,
39 or other public or municipal corporation or political subdivision.

1 (B) A fire department of the University of California and the
2 California State University.

3 (C) The Department of Forestry and Fire Protection.

4 (D) A county forestry or firefighting department or unit.

5 (2) Active firefighting members of a fire department that serves
6 a United States Department of Defense installation and who are
7 certified by the Department of Defense as meeting its standards
8 for firefighters.

9 (3) ~~Peace officers, as defined in Section 830.1, subdivision (a)~~
10 ~~of Section 830.2, and subdivisions (a) and (b) of Section 830.37,~~
11 ~~of the Penal Code, described in Sections 830.1 to 830.38, inclusive,~~
12 ~~of the Penal Code, who are primarily engaged in active law~~
13 ~~enforcement activities.~~

14 (4) (A) Fire and rescue services coordinators who work for the
15 Office of Emergency Services.

16 (B) For purposes of this paragraph, “fire and rescue services
17 coordinator” means a coordinator with any of the following job
18 classifications: coordinator, senior coordinator, or chief
19 coordinator.

20 (b) The term “injury,” as used in this division, includes cancer,
21 including leukemia, that develops or manifests itself during a period
22 in which any member described in subdivision (a) is in the service
23 of the department or unit, if the member demonstrates that he or
24 she was exposed, while in the service of the department or unit,
25 to a known carcinogen as defined by the International Agency for
26 Research on Cancer, or as defined by the director.

27 (c) The compensation that is awarded for cancer shall include
28 full hospital, surgical, medical treatment, disability indemnity, and
29 death benefits, as provided by this division.

30 (d) The cancer so developing or manifesting itself in these cases
31 shall be presumed to arise out of and in the course of the
32 employment. This presumption is disputable and may be
33 controverted by evidence that the primary site of the cancer has
34 been established and that the carcinogen to which the member has
35 demonstrated exposure is not reasonably linked to the disabling
36 cancer. Unless so controverted, the appeals board is bound to find
37 in accordance with the presumption. This presumption shall be
38 extended to a member following termination of service for a period
39 of three calendar months for each full year of the requisite service,

but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(e) The amendments to this section enacted during the 1999 portion of the 1999–2000 Regular Session shall be applied to claims for benefits filed or pending on or after January 1, 1997, including, but not limited to, claims for benefits filed on or after that date that have previously been denied, or that are being appealed following denial.

SEC. 3. Section 3212.5 of the Labor Code is amended to read:

3212.5. In the case of ~~a member of a police department of a city or municipality, or a member of the State Highway Patrol, a peace officer, as described in Sections 830.1 to 830.38, inclusive, of the Penal Code, when any such member that~~ *peace officer* is employed upon a regular, full-time salary, ~~and in the case of a sheriff or deputy sheriff, or an inspector or investigator in a district attorney's office of any county, employed upon a regular, full-time salary,~~ the term “injury” as used in this division includes heart trouble and pneumonia ~~which that~~ develops or manifests itself during a period while ~~such member, sheriff, or deputy sheriff, inspector or investigator~~ *the peace officer* is in the service of ~~the police department, the State Highway Patrol, the sheriff's office or the district attorney's office, as the case may be his or her agency.~~ The compensation ~~which that~~ is awarded for ~~such the~~ heart trouble or pneumonia shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

~~Such~~

The heart trouble or pneumonia so developing or manifesting itself shall be presumed to arise out of and in the course of the employment; provided, however, that the ~~member of the police department, State Highway Patrol, the sheriff or deputy sheriff, or an inspector or investigator in a district attorney's office of any county~~ *peace officer* shall have served five years or more in ~~such that~~ capacity before the presumption shall arise as to the compensability of heart trouble so developing or manifesting itself. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to ~~a member~~ *peace officer* following termination of service for a period of three calendar months for each full year of the requisite

1 service, but not to exceed 60 months in any circumstance,
2 commencing with the last date actually worked in the specified
3 capacity.

4 ~~Such~~

5 *The heart trouble or pneumonia so developing or manifesting*
6 *itself in—such these cases shall in no case be attributed to any*
7 *disease existing prior to—such the development or manifestation.*

8 ~~The term “members” as used herein shall be limited to those~~
9 ~~employees of police departments, the California Highway Patrol~~
10 ~~and sheriffs’ departments and inspectors and investigators of a~~
11 ~~district attorney’s office who are defined as peace officers in~~
12 ~~Section 830.1, 830.2, or 830.3 of the Penal Code.~~

13 ~~SEC. 2.~~

14 *SEC. 4.* Section 3212.6 of the Labor Code is amended to read:

15 3212.6. In the case of a ~~member of a police department of a~~
16 ~~city, county, district, the University of California, or California~~
17 ~~State University, or a member of the sheriff’s office of a county,~~
18 ~~or a member of the California Highway Patrol, or an inspector or~~
19 ~~investigator in a district attorney’s office of any county whose~~
20 ~~principal duties consist of active law enforcement service, or a~~
21 ~~peace officers described in Sections 830.1 to 830.38, inclusive, of~~
22 ~~the Penal Code, or a prison or jail guard or correctional officer~~
23 ~~who is employed by a public agency, when that person is employed~~
24 ~~upon a regular, full-time salary, or in the case of members of fire~~
25 ~~departments of any city, county, or district, or other public or~~
26 ~~municipal corporations or political subdivisions, when those~~
27 ~~members are employed on a regular fully paid basis, and in the~~
28 ~~case of active firefighting members of the Department of Forestry~~
29 ~~and Fire Protection whose duties require firefighting and first-aid~~
30 ~~response services, or of any county forestry or firefighting~~
31 ~~department or unit, where those members are employed on a regular~~
32 ~~fully paid basis, excepting those whose principal duties are clerical~~
33 ~~or otherwise do not clearly fall within the scope of active law~~
34 ~~enforcement, firefighting, or emergency first-aid response service~~
35 ~~such as stenographers, telephone operators, and other~~
36 ~~officeworkers, the term “injury” includes tuberculosis that develops~~
37 ~~or manifests itself during a period while that member is in the~~
38 ~~service of that department or office. The compensation that is~~
39 ~~awarded for the tuberculosis shall include full hospital, surgical,~~

1 medical treatment, disability indemnity, and death benefits as
2 provided by the provisions of this division.

3 The tuberculosis so developing or manifesting itself shall be
4 presumed to arise out of and in the course of the employment. This
5 presumption is disputable and may be controverted by other
6 evidence, but unless so controverted, the appeals board is bound
7 to find in accordance with it. This presumption shall be extended
8 to a member following termination of service for a period of three
9 calendar months for each full year of the requisite service, but not
10 to exceed 60 months in any circumstance, commencing with the
11 last date actually worked in the specified capacity.

12 A public entity may require applicants for employment in
13 firefighting positions who would be entitled to the benefits granted
14 by this section to be tested for infection for tuberculosis.

15 ~~SEC. 3.~~

16 *SEC. 5.* Section 3212.8 of the Labor Code is amended to read:

17 3212.8. (a) In the case of ~~members of a sheriff's office, of~~
18 ~~police or fire departments of cities, counties, cities and counties,~~
19 ~~districts, the University of California, California State University,~~
20 ~~or other public or municipal corporations or political subdivisions,~~
21 ~~or individuals described in Chapter 4.5 (commencing with Section~~
22 ~~830) of Title 3 of Part 2 of the Penal Code, whether those persons~~
23 are volunteer, partly paid, or fully paid, and in the case of active
24 firefighting members of the Department of Forestry and Fire
25 Protection, or of any county forestry or firefighting department or
26 unit, whether voluntary, fully paid, or partly paid, excepting those
27 whose principal duties are clerical or otherwise do not clearly fall
28 within the scope of active law enforcement service or active
29 firefighting services, such as stenographers, telephone operators,
30 and other office workers, the term "injury" as used in this division,
31 includes a blood-borne infectious disease or methicillin-resistant
32 *Staphylococcus aureus* skin infection when any part of the
33 blood-borne infectious disease or methicillin-resistant
34 *Staphylococcus aureus* skin infection develops or manifests itself
35 during a period while that person is in the service of that office,
36 staff, division, department, or unit. The compensation that is
37 awarded for a blood-borne infectious disease or
38 methicillin-resistant *Staphylococcus aureus* skin infection shall
39 include, but not be limited to, full hospital, surgical, medical

1 treatment, disability indemnity, and death benefits, as provided by
2 the workers' compensation laws of this state.

3 (b) (1) The blood-borne infectious disease or
4 methicillin-resistant *Staphylococcus aureus* skin infection so
5 developing or manifesting itself in those cases shall be presumed
6 to arise out of and in the course of the employment or service. This
7 presumption is disputable and may be controverted by other
8 evidence, but unless so controverted, the appeals board is bound
9 to find in accordance with it.

10 (2) The blood-borne infectious disease presumption shall be
11 extended to a person covered by subdivision (a) following
12 termination of service for a period of three calendar months for
13 each full year of service, but not to exceed 60 months in any
14 circumstance, commencing with the last date actually worked in
15 the specified capacity.

16 (3) Notwithstanding paragraph (2), the methicillin-resistant
17 *Staphylococcus aureus* skin infection presumption shall be
18 extended to a person covered by subdivision (a) following
19 termination of service for a period of 90 days, commencing with
20 the last day actually worked in the specified capacity.

21 (c) The blood-borne infectious disease or methicillin-resistant
22 *Staphylococcus aureus* skin infection so developing or manifesting
23 itself in those cases shall in no case be attributed to any disease or
24 skin infection existing prior to that development or manifestation.

25 (d) For purposes of this section, "blood-borne infectious disease"
26 means a disease caused by exposure to pathogenic microorganisms
27 that are present in human blood that can cause disease in humans,
28 including those pathogenic microorganisms defined as blood-borne
29 pathogens by the Department of Industrial Relations.

30 *SEC. 6. Section 3212.85 of the Labor Code is amended to read:*

31 3212.85. (a) This section applies to peace officers described
32 in Sections 830.1 to ~~830.5~~ 830.38, inclusive, of the Penal Code,
33 and members of a fire department.

34 (b) The term "injury," as used in this division, includes illness
35 or resulting death due to exposure to a biochemical substance that
36 develops or occurs during a period in which any member described
37 in subdivision (a) is in the service of the department or unit.

38 (c) The compensation that is awarded for injury pursuant to this
39 section shall include full hospital, surgical, medical treatment,

1 disability indemnity, and death benefits, as provided by this
2 division.

3 (d) The injury that develops or manifests itself in these cases
4 shall be presumed to arise out of, and in the course of, the
5 employment. This presumption is disputable and may be
6 controverted by other evidence. Unless controverted, the appeals
7 board is bound to find in accordance with the presumption. This
8 presumption shall be extended to a member following termination
9 of service for a period of three calendar months for each full year
10 of the requisite service, but not to exceed 60 months in any
11 circumstance, commencing with the last date actually worked in
12 the specified capacity.

13 (e) For purposes of this section, the following definitions apply:

14 (1) "Biochemical substance" means any biological or chemical
15 agent that may be used as a weapon of mass destruction, including,
16 but not limited to, any chemical warfare agent, weaponized
17 biological agent, or nuclear or radiological agent, as these terms
18 are defined in Section 11417 of the Penal Code.

19 (2) "Members of a fire department" includes, but is not limited
20 to, an apprentice, volunteer, partly paid, or fully paid member of
21 any of the following:

22 (A) A fire department of a city, county, city and county, district,
23 or other public or municipal corporation or political subdivision.

24 (B) A fire department of the University of California and the
25 California State University.

26 (C) The Department of Forestry and Fire Protection.

27 (D) A county forestry or firefighting department or unit.

28 ~~SEC. 4.~~

29 *SEC. 7.* Section 3212.9 of the Labor Code is amended to read:

30 3212.9. In the case of a ~~member of a police department of a~~
31 ~~city, county, city and county, district, the University of California,~~
32 ~~or California State University, or a member of the sheriff's office~~
33 ~~of a county, or a member of the California Highway Patrol, or a~~
34 ~~county probation officer, or an inspector or investigator in a district~~
35 ~~attorney's office of any county whose principal duties consist of~~
36 ~~active law enforcement service, when that person is peace officer~~
37 ~~described in Sections 830.1 to 830.38, inclusive, of the Penal Code,~~
38 ~~when that person is employed on a regular, full-time salary, or in~~
39 ~~the case of a member of a fire department of any city, county, or~~
40 ~~district, or other public or municipal corporation or political~~

1 subdivision, or any county forestry or firefighting department or
2 unit, when those members are employed on a regular full-time
3 salary, excepting those whose principal duties are clerical or
4 otherwise do not clearly fall within the scope of active law
5 enforcement or firefighting, such as stenographers, telephone
6 operators, and other officeworkers, the term “injury” includes
7 meningitis that develops or manifests itself during a period while
8 that person is in the service of that department, office, or unit. The
9 compensation that is awarded for the meningitis shall include full
10 hospital, surgical, medical treatment, disability indemnity, and
11 death benefits as provided by the provisions of this division.

12 The meningitis so developing or manifesting itself shall be
13 presumed to arise out of and in the course of the employment. This
14 presumption is disputable and may be controverted by other
15 evidence, but unless so controverted, the appeals board is bound
16 to find in accordance with it. This presumption shall be extended
17 to a person following termination of service for a period of three
18 calendar months for each full year of the requisite service, but not
19 to exceed 60 months in any circumstance, commencing with the
20 last date actually worked in the specified capacity.